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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY Seb DEPUTY

13 Attorneys for Plaintiff
14 FEDERAL TRADE COMMISSION

15 UNITED STATES DISTRICT COURT
16 SOUTHERN DISTRICT OF CALIFORNIA

17 FEDERAL TRADE COMMISSION,

18 Plaintiff,

19 v.

20 YOUR BABY CAN LLC, HUGH
21 PENTON, JR., and ROBERT TITZER,
22 Ph.D.,

23 Defendants.

Case No. 12CV2114

COMPLAINT FOR
PERMANENT INJUNCTION
AND OTHER EQUITABLE
RELIEF

24 Plaintiff, the Federal Trade Commission ("FTC"), for its Complaint alleges:

25 1. The FTC brings this action under Section 13(b) of the Federal Trade Commission
26 Act ("FTC Act"), 15 U.S.C. § 53(b), to obtain permanent injunctive relief, rescission or
27 reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten
28 monies, and other equitable relief for Defendants' acts or practices in violation of Section 5(a) of
the FTC Act, 15 U.S.C. § 45(a), in connection with Defendants' labeling, advertising, marketing,
and sale of Your Baby Can Read!®, an infant and child learning program.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

3. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b).

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. § 53(b).

DEFENDANTS

6. **Defendant Your Baby Can LLC ("YBC")** is a California limited liability corporation with its principal office or place of business at 2230 Camino Vida Roble, Suite 105, Carlsbad, California 92011. YBC transacts or has transacted business in this district and throughout the United States. At all times material to this Complaint, acting alone or in concert with others, YBC has advertised, marketed, distributed, or sold the Your Baby Can Read!® program to consumers throughout the United States.

7. **Defendant Hugh Penton, Jr. ("Penton")** formed YBC in 2007 and was responsible for securing, developing, and implementing the intellectual property rights for the Your Baby Can Read!® program. Defendant Penton served as President and Chief Executive Officer of YBC until March 2010 and is a member of the YBC Board of Directors. At least until March 2010, Penton oversaw all operations for YBC, including operations regarding the creation, development, and approval of YBC advertising and promotional material and the development, review, and evaluation of substantiation for representations made in YBC advertising and promotional material. In addition, Penton was and is President and Chief

1 Executive Officer of Penton Overseas, Inc., a corporation that is the primary owner of YBC.
2 Penton Overseas provides accounting, payroll, customer service, warehousing distribution, and
3 fulfillment activities for the operation of YBC's business. At all times material to this Complaint,
4 acting alone or in concert with others, he formulated, directed, controlled, had the authority to
5 control, or participated in the acts and practices of YBC, including the acts and practices set forth
6 in this Complaint. Defendant Penton resides in this district and, in connection with the matters
7 alleged herein, transacts or has transacted business in this district and throughout the United
8 States.

9 8. **Defendant Robert Titzer, Ph.D.** ("Titzer") is the creator of the Your Baby Can
10 Read!® program. Defendant Titzer entered into a Master Consulting Agreement with YBC, in
11 September 2007, under which he assisted with promotional and marketing activities, product
12 development activities, and acted as a spokesperson for the Your Baby Can Read!® program. In
13 May 2009, through an Exclusive Licensing Agreement, Titzer became an Executive Vice
14 President of YBC and employee of YBC. In this capacity, Titzer provided services related to
15 strategy, planning, product development, and product promotion. The Exclusive Licensing
16 Agreement also gave Titzer "academic approval" rights over each development stage of new
17 products, i.e., the right to raise scientific or academic objections to product changes that had to
18 be resolved through specified procedures prior to continuation of the product's development.
19 From at least January 2008 to the present, Titzer appeared as an expert endorser on all product
20 packaging for the Your Baby Can Read!® program, and in most advertising and promotional
21 material. At all times material to this Complaint, acting alone or in concert with others, Titzer
22 formulated, directed, controlled, had the authority to control, or participated in the acts and
23 practices of YBC, including the acts and practices set forth in this Complaint. Defendant Titzer
24 resides in this district and, in connection with the matters alleged herein, transacts or has
25 transacted business in this district and throughout the United States.

COMMERCE

9. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS ACTIVITIES

10. Defendants YBC, Penton, and Titzer have manufactured, advertised, promoted, offered for sale, sold, and distributed early education and development products, including the Your Baby Can Read!® program to consumers throughout the United States since at least January 2008. The Your Baby Can Read!® program is a set of DVDs, lift-a-flap books, and word cards. The Your Baby Can Read!® program is primarily targeted to parents and grandparents with children or grandchildren between the ages of three months and five years.

11. Consumers can purchase the Your Baby Can Read!® program directly from Defendant YBC, including through its own Internet site and through a toll free number. Consumers can also purchase the Your Baby Can Read!® program at retail stores nationwide, including Wal-Mart, Kmart, Walgreens, Buy Buy Baby, Toys "R" Us, and BJ's Wholesale Club, and through retailer websites, such as Amazon.com and BabiesRUs.com.

12. The retail price for the complete Your Baby Can Read!® program was and is approximately \$200. From January 2008 to present, total sales for the Your Baby Can Read!® program have exceeded \$185 million.

13. Defendants advertised the Your Baby Can Read!® program through a wide variety of media. Defendants advertised the program through infomercials and short-form advertisements that appeared on national, regional, and local cable and network television stations, including Lifetime, Discovery Kids, Disney DX, Cartoon Network, and Nickelodeon. They also advertised the program on national and local radio stations. Defendants published or caused to be published print advertisements in numerous national publications, including Parenting, Pregnancy and Newborn, and American Baby (First Year of Life). Defendants also widely advertised the Your Baby Can Read!® program on the Internet, including websites owned or operated by Defendant YBC, such as www.yourbabycanread.com, YouTube, Twitter, and

1 Facebook.

2 14. To induce consumers to purchase the Your Baby Can Read!® program, the
3 Defendants disseminated or caused to be disseminated advertisements, including, but not limited
4 to, the attached Exhibits A through J. The advertising and promotional materials typically show
5 babies reading word cards, toddlers reading books, and parents providing glowing testimonials.
6 A likeness of Defendant Titzer appears on all product packaging and in almost all
7 advertisements, and, in many of these materials, he is characterized as a "recognized expert in
8 infant learning." The advertisements contain, among other things, the following statements and
9 depictions:

10 **A. Television: 30-Minute Advertisement (Exhibit A – DVD and Transcript of DVD)**

11 [YBCFTC00218697]

12 Chad Murdock: "Hi, I'm Chad Murdock. As a producer, I have seen thousands of
13 products during my career. Two years ago, I was compelled to bring one
14 of those products to you. . . . I am back again to share more incredible
15 stories from around the world. Your response to Your Baby Can Read has
16 been overwhelming, with over one million families helping babies learn to
17 read. See how far some have grown and you too will want to get Your
18 Baby Can Read. What you are about to see will amaze you."

19 * * *

20 On Screen: "Atia at 22 months HOME VIDEO" [Toddler in high chair eating with a
21 parent holding up a flashcard with "touch your ears" printed on it]

22 Unidentified Female: "These words say?"

23 Atia: "Touch your ears."

24 * * *

25 On screen: "Rex at 14 months HOME VIDEO" [Baby sitting on the grass holding a
26 flashcard with "hi" printed on it]

27 Unidentified Female: "What does it say, Rex?"

28 Rex: "Hi."

1 * * *

2 On screen: "Charley at 18 months HOME VIDEO" [Toddler standing in front of a
3 window. Parent behind toddler holding up a flashcard with "turtle"
4 printed on it]

5 Unidentified Female: "Do you know this one?"

6 Charley: "Oh, Turtle."

7 * * *

8 Chad Murdock: "These children have seized this small window of early learning and they
9 love to learn. Today you're going to hear their amazing stories and meet
10 Dr. Robert Titzer, who created the revolutionary early learning system for
11 his own daughter, called Your Baby Can Read."

12 On Screen: "Robert Titzer, PhD
13 Creator of Your Baby Can Read"

14 Chad Murdock: "I sat down with Dr. Titzer to discuss a recent scientific study of two
15 groups —"

16 On Screen: "Results based on mean scores of two study groups.
17 Study sponsored by Your Baby Can Read on ages 10 to 23 months."
18 [at the bottom of the screen in yellow letters superimposed over the host's
19 beige shirt and appearing on the screen for approximately 7 seconds]

20 Chad Murdock: "— of babies, a Your Baby Can Read group and a control group."

21 On Screen: "Test scores chart" [Bar graph titled "Overall Language Results" with bars
22 showing that the Your Baby Can Read group were average, high average
23 or superior whereas the control group was average or below average.
24 Another Bar graph titled "Overall Cognitive Results" with bars showing
25 that the Your Baby Can Read group scored average, high average, or
26 superior, and the control group scored average or below average.]

1 Dr. Robert Titzer: "In all of these tests, the control group babies were at average or
2 below average, whereas the Your Baby Can Read group babies had overall
3 higher language scores. They had cognitive functioning scores higher
4 than the control group babies. The Your Baby Can Read group babies did
5 better than the control group babies in every area."

6 * * *

7 Chad Murdock: "Let's get to these amazing stories. The first of two families I
8 interviewed shows that it can work for two children of different ages in the
9 same house."

10 * * *

11 On Screen: "Amy, Yma & Archer's mom"

12 Amy: "One and a half or two years old, I ordered it and it only took her [Yma] a
13 few months."

14 On Screen: "Yma at age 3 HOME VIDEO" [Yma sitting reading from a book]

15 Amy: "I called Manning at work and I told him, I said, Oh my gosh, she's
16 reading! I have a film of her on vacation. She walked up to a 'Beware of
17 Mountain Lion' sign, and it's three paragraphs and she just read it to us."

18 On Screen: "Make plenty of noise while you hike so as to reduce the chances of
19 surprising a lion. . . ."

20 Yma: "Make plenty of noise while you hike so as to reduce the chances of
21 surprising a lion. I read it to you, too."

22 * * *

23 Manning: "I didn't really know whether it was the program or whether it was just
24 that Yma was really gifted and talented. . . . But here Archer is being able
25 to read at one-and-a-half."

26 * * *

27 On Screen: "Sharon & Jeff HOME VIDEO"

1 Sharon: "We first came across Your Baby Can Read at the Scottish baby show. At
2 the time, my daughter Charley was about nine, ten months old. We're at
3 home that day with the full Your Baby Can Read package and really
4 starting enjoying it and after a couple of weeks she was -- that was all she
5 wanted to do, and it just made me feel wonderful."

6 * * *

7 On Screen: "Charley at 24 months HOME VIDEO" [Child sitting reading a book,
8 pointing to the words]

9 Charley: "He's searching ... He's peeking."

10 * * *

11 Chad Murdock: "You might be saying as a parent, I am not an expert. You don't have to
12 be. Your Baby Can Read was designed by an expert who is also a father.
13 He will be the expert. You will be the teacher."

14 * * *

15 Dr. Robert Titzer: "This is not a short-term effect. This is a long-term effect that can
16 change everything about the child, what the child's interested in, how the
17 child does in school, the child's self-esteem. This can put your child on a
18 different path in life. This is what happened with our family and many,
19 many thousands of other families."

20 * * *

21 Chad Murdock: "There are so many examples of how Your Baby Can Read has helped
22 children later in their education. . . . Who can forget Anya Alexis? I got to
23 sit down with her mother Brandy in Oklahoma, who knew Your Baby Can
24 Read could work when she first heard Dr. Titzer speak."

25 * * *

1 On Screen: "Anya Alexis at age 2 HOME VIDEO" [Anya Alexis, sitting in a chair
2 reading a book aloud]
3 "Charlotte's Web - 'and she took hold of the axe and tried to pull it out of
4 her father's hand'"

5 Anya Alexis: "And she took hold of the axe and tried to pull it out of her father's hand.
6 That's not nice."

7 * * *

8 Brandy: "When Anya Alexis was three years old, she read her first Harry Potter
9 book and she fell in love with it."

10 * * *

11 Chad Murdock: "Gwendolyn Cruise, Director of JuniorVersity has been using Your
12 Baby Can Read since 2005 with amazing results."

13 * * *

14 Gwendolyn: "Our first-graders here are now reading at a third-grade level. . . ."

15 * * *

16 Unidentified Female: "My baby is two years old and he is reading."

17 Unidentified Male: "He can read, he can understand, he's using the correlations
18 perfectly."

19 * * *

20 Female Announcer: "When a baby is born, its brain craves stimulation and its
21 development accelerates at an incredible pace."

22 On Screen: "Human Brain Development"

23 "Synapse Formation Dependent on Early Experiences"

24 [Graph labeled "Synaptic Formation" and bottom labeled "Age" with
25 numbers 0 to 5. Three lines appear on the graph for Language, Sensory
26 Pathway, and Higher Cognitive Function. Words "Window of
27 Opportunity" appear, above the graph lines. The graph lines start at
28 bottom of graph and peak before age two and then level off or decrease.]

1 Female Announcer: "Studies have shown that synaptic connections related to language
2 acquisition start before birth and peak around 11 months of age -- "

3 On Screen: "Phenomenal brain development during a child's first 5 years"

4 "25% 75% 90%
5 Birth 2 years 5 years"

6 [Picture of a human brain]

7 Female Announcer: " -- with nearly 90% of this incredible window of growth complete
8 in the first five years. Every parent can seize this small window of
9 opportunity and truly give their child an early start on all learning."

10 On Screen: "Awards for Your Baby Can Read"

11 Female Announcer: "Your Baby Can Read is a multiple award-winner, a proven learning
12 system which can give your child . . . increased communication, enhanced
13 learning and overall confidence."

14 Female Announcer: "The infant and toddler years are the best and easiest time to learn"

15 On Screen: "Synapses in Infants and Toddlers"

16 "Tens of Thousands of brain connections are created every second!"

17 [Picture of brain with electric currents flowing through it and lighting up]

18 Female Announcer: "when the brain is creating thousands of synapses or connections
19 every second. This allows the child to learn both the written word and
20 spoken word."

21 * * *

22 Female Announcer: "Your Baby Can Read can . . . become the foundation for . . . all
23 learning for the rest of their lives,"

24 On Screen: "Results based on mean scores of two study groups.

25 Study sponsored by Your Baby Can Read on ages 10 to 23 months."

26 Female Announcer: "and science proves it."
27
28

1 On Screen: "Overall Language Results [C]hart
2 Auditory Communication Results
3 Expressive Communication Results
4 Overall Cognitive Results"

5 Female Announcer: "In a scientific study with two groups of 10 to 23-month old babies,
6 the Your Baby Can Read group scored higher than the control group in all
7 areas of the tests, overall language, understanding what they hear,
8 expression using language and overall cognitive ability. This is proven.
9 Seize this small window of opportunity while they're young."

10 * * *

11 Female Announcer: "... This proven read and play program captures your child's
12 attention using interactive books, DVDs and sliding cards.... And before
13 you know it, your baby can read."

14 * * *

15 Chad Murdock: "You know, in the first show, we had the chance to be introduced to an
16 amazing family, with two boys who both learned to read early with Your
17 Baby Can Read."

18 On Screen: "Brian and Lindsay
19 Graham and Ridley's Parents"

20 Lindsay: "Graham started at I would say around the sixth-month mark and we
21 didn't see any sign."

22 On Screen: "Graham at 14 months HOME VIDEO" [Baby in high chair reading
23 words off flashcards.]

24 Lindsay: "But as soon as he could talk, he was reading everything off the screen."

25 * * *

26 Lindsay: "Having Ridley do the exact same thing two years later was the give-away
27 right there."

28 On Screen: "Ridley at 18 months HOME VIDEO"

1 Lindsay: "It was all a result of this program."

2 * * *

3 Krissy: "I saw the program when I was pregnant and I said that we had to have it,
4 especially with all the testimonials. You see all the kids doing it, and you
5 know it can't be fake. . . . So I think at three months is when we had
6 started Your Baby Can Read, and she loved it. And then I think about the
7 nine-month mark, she was starting to pick up the words."

8 * * *

9 Lautrice: "As a reading specialist, I said developmentally, a child has to be ready to
10 read and at one, they're not ready to read. And then he put it on. Racquel
11 took to it like a fish takes to water."

12 Willie: "She was up to 500 words the last time I checked."

13 * * *

14 Willie: "Everybody thinks it's memory, you know, she memorizes you saying
15 that. But then we'd mix it up a little bit . . . just write it anywhere, random
16 order, and they're like, man, she is pretty smart."

17 **B. Radio Advertisement (Exhibit B – CD-Rom) [YBCFTC0000733]**

18 Announcer: ". . . As a parent, there is nothing better than seeing your child understand
19 how to read a word for the first time. And, we have an amazing new offer
20 today on the Your Baby Can Read program. This is the program that
21 teaches infants and toddlers to read. . . . The researchers tell us that the
22 best time for kids to learn a language is between birth and 5 years old
23 because that's when over 90% of brain development takes place. . . ."

24 **C. Radio Advertisement (Exhibit C – CD-Rom) [YBCFTC0000734]**

25 Announcer: "Studies prove it. The earlier a child learns to read, the better they
26 perform in school and later in life. . . . Between birth and five years old
27 over 90% of brain development takes place. This short window of
28

1 opportunity is the critical time to teach your child to read. That's why the
2 Your Baby Can Read program has been so successful. . . ."

3 **D. Print Advertisement (Exhibit D) [YBCFTC00000693]**

4 Appearing at the top left of advertisement:

5 [Picture of a toddler sitting on a stack of books and holding a book open on her lap]

6 "Imagine . . .

7 **Your toddler reading**

8 **YOU a story!"**

9 "*Your Baby Can Read!*[®] is the early reading

10 Program for children 6 months to 5 years"

11 Appearing alongside the picture of the toddler on the books:

12 "And best of all it's FUN. The natural window

13 of opportunity to learn written language is

14 at the same time children learn to speak.

15 Imagine your child reading before the age

16 of five, prior to entering school!"

17 Appearing at the bottom left of the advertisement:

18 [Picture of Dr. Titzer with text next to it]

19 "Your Baby Can Read![®] was

20 Developed by Dr. Robert Titzer, Ph.D.,

21 A recognized expert in infant research"

22 **E. Product Packaging: Volume 1 of Your Baby Can Read![®] System (Exhibit E)**

23 [YBCFTC00000776]

24 Appearing on the front panel of the package:

25 "Robert Titzer, Ph.D.

26 **Your Baby Can Read![®] Early Language Development System"**

27 Appearing on the back panel of the package:

1 “Dr. Titzer’s next step following the Starter DVD in your child’s early language
2 development.”

- 3 – “This revolutionary early reading program encourages infants and toddlers to
4 learn the written word NATURALLY as they are learning the spoken word.”
5 – “The most natural window for language development is 3 months to 5 years.”
6 – “Studies indicate that early readers are more confident, have higher self-esteem,
7 and generally do better in school and in life!”

8 [Picture of four children: a baby wearing only a diaper sitting, a toddler standing holding
9 a sliding flashcard, a preschooler standing holding a card with her name written on it,
10 another preschooler standing holding a book]

11 “Blake – 14 months | Ridley – 19 months | Aubrey – 3 years old | Drake – 4 years old”

12 [Speech bubble above childrens’ heads with arrows pointing to all 4 children]

13 “I can read!”

14 Appearing below picture of the four children:

15 “Now is the time to give your child the gift of reading.”

16 “For ages 3 months to 5 years.”

17 **F. Product Packaging: Your Baby Can Read!® System (Exhibit F) [YBCFTC00000779]**

18 4 DVDs, 20 word & picture cards, and 4 lift-a-flap books

19 Appearing on the front panel of the box:

20 **“Starting Early Is the Key to Reading Success!”**

21 **Builds**

- 22 • Self Esteem
23 • Comprehension
24 • Phonics Awareness”

25 “Give your child the gift of a lifetime!”

26 “Reading System for ages 3 months to 5 years”
27
28

1 Appearing on the right side of the box:

2 [Picture of Dr. Robert Titzer]

3 "Robert Titzer, Ph.D.

4 *Your Baby Can Read!*® was developed by Robert Titzer, Ph.D., a recognized expert in
5 infant learning."

6 Appearing on the left side of the box:

7 [Picture of four children]

8 "Blake – 14 months | Ridley – 19 months | Aubrey – 3 years old | Drake – 4 years old"

9 [Speech bubble above childrens' heads with arrows pointing to all 4 children]

10 "I can read!"

11 Appearing below picture of the four children:

12 "Major university studies indicate the best time for early learning is during the first five
13 years of life."

14 [Graph titled "Human Brain Development" with text above graph stating "Synapse
15 Formation Dependent on Early Experiences;" left side of graph labeled "Synaptic
16 Formation" and bottom labeled "Age" with numbers 0 to 5. Three lines appear on the
17 graph for Language, Sensory Pathway and Higher Cognitive Function. Words "Window
18 of Opportunity" appear above the graph lines. The graph lines start at bottom of graph
19 and peak before age two and then level off or decrease.]

20 **G. Product Packaging: Box of Your Baby Can Read!® DVD Set (Exhibit G)**

21 [YBCFTC00000808]

22 Appearing on the front of the box:

23 "Dr. Titzer's interactive and multi-sensory learning method can be taught at the same
24 time as your child's speech develops."

25 Appearing on the left side of the box:

26 "Studies indicate that early readers are more confident, have higher self-esteem, and
27 generally do better in school and in life!"
28

1 Appearing on the back of the box:

2 ***"The Your Baby Can Read!® Learning System*** delivers the tools that will make an
3 incredible difference in your child's life! This easy-to-use DVD and word card set
4 teaches your child whole language and phonics using a combination of sound, sight, and
5 interaction. This multi-sensory technique helps a child group word recognition – leading
6 to early reading success!"

7 * * *

8 "A national panel on reading and early education suggests combining both
9 phonics and whole language approach to reading – the fundamental aspect of the
10 ***Your Baby Can Read Learning System!***"

11 * * *

12 *"A national panel of reading specialists and educators determined that most of the*
13 *nation's reading problems could be eliminated if we start teaching reading earlier."*

14 **H. Internet Website: www.yourbabycanread.com (excerpts) (Exhibit H)**

15 Appearing on the home page:

16 [Video with clips from the infomercial running at top of the web page]

17 Appearing under the video of the infomercial on the home page:

18 **"What Makes Your Baby Can Read!® So Special?**

19 A baby's brain thrives on stimulation and develops at a phenomenal pace ... nearly 90%
20 during the first five years of life! The best and easiest time to learn a language is during
21 the infant and toddler years when . . . the brain is creating thousands of synapses, or
22 connections, allowing a child to learn both the written word and spoken word
23 simultaneously."

24 "Seize this small window of opportunity to enhance your child's learning ability with the
25 Your Baby Can Read Early Language Development System."

26 **"Benefits of Early Literacy**

27 According to Your Baby Can Read developer Dr. Robert Titzer, the current practice of
28 starting to teach reading in school is too late. When children develop reading skills

1 during their natural window of opportunity, from about birth to age four, they read better
2 and are more likely to enjoy it.”

3 “In fact, studies prove that the earlier a child learns to read, the better they perform in
4 school and later in life. Early readers have more self-esteem and are more likely to stay
5 in school. Meanwhile, a national panel of reading specialists and educators determined
6 that most of the nation’s reading problems could be eliminated if children began reading
7 earlier.”

8 Appearing to the right of the above-quoted text:

9 [Graph titled “Human Brain Development” with text below graph stating “Synapse
10 Formation Dependent on Early Experiences;” right side of graph labeled “Synaptic
11 Formation” and bottom labeled “Age” with numbers 0 to 5. Three lines appear on the
12 graph for Language, Sensory Pathway and Higher Cognitive Function. Words “Window
13 of Opportunity” appear above the graph lines. The graph lines start at bottom of graph
14 and peak before age two and then level off or decrease.]

15 **I. Other Internet Advertising: Krissy & Cory Schneider YBC YouTube 10-29-10**

16 (Exhibit I – DVD) [YBCFTC00000964]

17 Murdock: “Rarely has a new way of teaching reached around the world, touching the
18 lives of over one million families. From the first show, I felt that Your
19 Baby Can Read could truly change the future of learning.”

20 On Screen: “Chad Murdock
21 TV Producer/Father”

22 Murdock: “Krissy and Cory saw the Your Baby Can Read infomercial and wanted to
23 give their daughter Lauren the opportunity to learn to read. They started
24 her at three months . . .”

25 * * *

26 On Screen: [baby in a high chair with someone holding up card with words printed on
27 them; “Home Video” graphic on bottom]

28 “Lauren at 10 months”

Krissy: "At the 9 month mark she was starting to pick up words. We couldn't believe it. She was trying to say 'hi' and she would 'wave.' And, she would start trying to say the first syllable of the word. . . A year and 4 months and she was like through the entire program of Your Baby Can Read."

On Screen: [baby in a high chair with someone holding up card with words printed on them; "Home Video" graphic on bottom right]
"Lauren at 15 months"

Lauren: "Keys. Cows."

J. Other Internet Advertising: LeeAnn YBC YouTube 10-29-10 (Exhibit J – DVD)
[YBCFTC00000965]

Murdock: "LeeAnn used Your Baby Can Read with Kekoa and after he started with Your Baby Can Read, one day, on his birthday, he read all his cards by himself. He learned so quickly that they started teaching him Spanish at a very early age."

* * *

On Screen: [Kekoa kneeling by a coffee table with a book open, reading the book,
"Home Video" graphic on bottom right]
"Kekoa at 4 years old"

LeeAnn: "The books he's reading, I see 5th and 6th graders reading."

* * *

LeeAnn: "And now in Spanish, because he can read in English, he's learned to read faster in Spanish; so he reads over 150 words in Spanish too."

VIOLATIONS OF THE FTC ACT

15. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts of practices in or affecting commerce."

COUNT I

Unlawful Claims for the Your Baby Can Read! Program

16. Through the means described Paragraph 14, including, but not necessarily limited to, the statements and depictions contained in the advertisements attached as Exhibits A through J, and through the use of the name Your Baby Can Read, Defendants YBC, Penton, and Titzer have represented, expressly or by implication, that:

- a. Your Baby Can Read!® teaches infants and children as young as 9 months old to read;
- b. Children who use Your Baby Can Read!® will be able to read books, such as Charlotte's Web and Harry Potter, at the age of three or four years;
- c. Your Baby Can Read!® gives infants and children an early start on academic learning, allowing them to perform better in school and later in life than children who did not use the program; and
- d. Scientific studies prove that Your Baby Can Read!® teaches infants and children to read.

17. The representations set forth in Paragraph 16 are false or were not substantiated at the time the representations were made. Therefore, the making of the representations set forth in Paragraph 16 constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

Unlawful Expert Endorsement

18. Through the means described Paragraph 14, including the statements and depictions contained in the advertisements attached as Exhibits A through H, among others, Defendant Titzer has made statements, including statements as an expert endorser, representing, expressly or by implication, that:

- a. Your Baby Can Read!® teaches infants and children as young as 9 months old to read;

- 1 b. Your Baby Can Read!® gives infants and children an early start on
2 academic learning, allowing them to perform better in school and later in
3 life than children who did not use the program; and
4 c. Scientific studies prove that Your Baby Can Read!® teaches infants and
5 children to read.

6 19. Defendant Titzer did not exercise his purported expertise in infant research in the
7 form of an examination or testing of the Your Baby Can Read!® program at least as extensive as
8 an expert in infant research would normally conduct, in order to support the conclusions
9 presented in his endorsement.

10 20. Therefore, the making of the representations set forth in Paragraph 18 constitutes
11 a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

12 CONSUMER INJURY

13 21. Consumers have suffered and will continue to suffer substantial injury as a result
14 of Defendants' violations of the FTC Act. In addition, Defendants have been unjustly enriched
15 as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants
16 are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

17 THIS COURT'S POWER TO GRANT RELIEF

18 22. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant
19 injunctive and such other relief as the Court may deem appropriate to halt and redress violations
20 of any provision of law enforced by the FTC. The Court, in the exercise of its equitable
21 jurisdiction, may award ancillary relief, including rescission or reformation of contracts,
22 restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and
23 remedy any violation of any provision of law enforced by the FTC.

24 PRAYER FOR RELIEF

25 23. WHEREFORE, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15
26 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

27 A. Enter a permanent injunction to prevent future violations of the FTC Act by
28 Defendants;

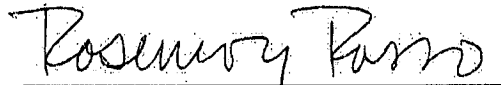
1 B. Award such relief as the Court finds necessary to redress injury to consumers
2 resulting from Defendants' violations of the FTC Act, including, but not limited to, rescission or
3 reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-
4 gotten monies; and

5 C. Award Plaintiff the costs of bringing this action, as well as such other and
6 additional relief as the Court may determine to be just and proper.

7 Respectfully submitted,

8 WILLARD K. TOM
9 General Counsel

10
11 Dated: 8/27/12



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